THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 27397 OF 1996

Date: 23.01.2007

Between:

Sathaiah.

… Petitioner

and

The Labour Court, Godavarikhani and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 27397 OF 1996

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-labour Court, Godavarikhani, in I.D. No. 158 of 1993 dated 08.10.1996, the petitioner-workman has approached this Court. The petitioner was appointed as Man-Mazdoor on 01.09.1983. He filed an application under Section 2(A)-2 of the Industrial Disputes Act questioning the action of the respondents in asking him not to attend work from 01.07.1985 and contended that the action of the respondents in doing so was in violation of Section 25-F and G read with Section 2(oo) of the Industrial Disputes Act, 1947. The petitioner contended that neither was any notice of termination given nor was he paid any retrenchment compensation and while he was removed from service, his juniors were continued.

In its counter affidavit, the respondents contended that the petitioner worked in Sub-division No.1 from 01.09.1983 to 31.10.1993 out of which, he worked for only 58 days with three days absence, that he worked from 01.06.1984 to 30.06.1984 for 30 days in Sub-division No.5, for 29 days from 01.07.1984 to 31.07.1984 and that he again worked from 01.08.1984 to 31.08.1984, 01.10.1984 to 31.10.1984. The respondents have specifically stated that the petitioner did not work from 01.11.1984 to 30.11.1984 and after a gap of 30 days he again worked from

01.12.1985 to 31.01.1984 and that during the period from 01.06.1984 to 31.05.1985 the petitioner had not completed the minimum required 240 days of service for claiming the benefit of Section 25-F of the Industrial Disputes Act. The petitioner-workman examined himself as WW-1. The Tribunal noted the petitioner's contention that he continuously worked for 240 days and that he was relying on the certificates issued in Ex.W-1 to W3. While Ex.W-1 showed that the petitioner worked for two months from 01.09.1983 to 31.10.1983, Ex.W-3 showed that he worked from 01.06.1984 to 31.01.1985. The Tribunal noted that the muster rolls were produced and were marked as Ex.M1 to M10 and that the muster rolls show the petitioner did not work in the month of November, 1984 and that there was a break in service in November, 1984. The Tribunal also held that if calculations were made, the period during which the petitioner worked fell short of 240 days and as the petitioner-workman had not worked continuously for 240 days, as contemplated under Section 25-B of the Industrial Disputes Act, an award was passed dismissing the I.D.

Sri B. G. Ravindra Reddy, learned Counsel for the petitioner, would submit that the petitioner had discharged the initial burden of establishing that he had worked for 240 days in the 12 month period preceding his termination and not only had he examined himself as WW-1 he had also produced the service certificates in WW-1 to WW-3. According to the learned Counsel, since the initial burden was discharged by the petitioner-workman, the burden shifted on the respondent-employer to show that the

petitioner had not worked for the minimum required 240 days in the 12 months period preceding his termination. Learned Counsel would submit that the petitioner had filed an I.A, calling for the muster rolls for the period from 01.06.1984 to 30.06.1985, and the respondent had not only failed to file its counter-affidavit in the said I.A. but had also failed to produce the muster rolls for November, 1984 even after the I.A. was allowed by the Tribunal. Learned Counsel would submit that, since the respondents had not produced the muster rolls despite a direction to do so by the Tribunal, an adverse inference had to be drawn against them that the records, though available, were not produced and that it must be presumed that the petitioner had put in the minimum required 240 days service in the 12 month period preceding his termination. Learned Counsel would submit that, even the muster rolls produced were in the form of loose sheets and could always be used as an excuse to withhold any one of the sheets to deprive the workman of the benefits to which he was legitimately entitled to.

Learned Counsel would place reliance on **R.M. Yellatti Vs. The Assistant Executive Engineer**[1].

It is well settled, as held in a catena of decisions of the Supreme Court in **Range Forest Officer Vs. S.T. Hadimani**[2], **Rajasthan State Ganganagar S. Miolls Ltd. Vs. State of Rajasthan**[3], **M.P. Electricity Board Vs. Hariram**[4], **Municipal Corporation, Faridaad Vs.Siri Niwas**[5], that the burden is on the workman to establish that he had put in the minimum required

240 days of service in the 12 month period prior to his termination entitling him for the protection of Section 25-F of the Industrial Disputes Act. It has also been held that the self-serving oral testimony of the workman would not suffice. In the case on hand, in addition to his oral testimony, the petitioner–workman had produced Ex.W-1 to W3. While Exs.W-1 relates to the period from 01.09.1983 to 31.10.1983 the entire issue revolves round the certificate in Ex.W-2 which shows that the petitioner worked for the period from 01.06.1984 to 31.01.1985. The respondents, in their counter affidavit filed before the Tribunal, have categorically stated that the petitioner did not work for the month of November, 1984. They produced the muster rolls for the remaining months from 01.06.1984 to 31.01.1985. The Tribunal, on computing the number of days of service the petitioner had worked, found as a fact that the petitioner had not put in the minimum required 240 days of service in the 12 month period prior to his termination. The contention of Sri B. G. Ravindra Reddy, learned Counsel for the petitioner that, since the Tribunal had passed an order in the I.A. directing the respondents to produce the muster rolls and since the respondents had failed to produce the muster rolls for the month of November, 1984, an adverse inference has to be drawn against them and it must be presumed that the petitioner had worked for the month of November, 1984, does not merit acceptance. The mere fact that the Tribunal had directed production of the muster rolls would not result in the respondents requiring the non-existent muster roll for the month of November, 1984 to be produced. The respondents have specifically pleaded

in their counter-affidavit before the Tribunal that the petitioner did not work in the month of November, 1984. As such the question of their producing the muster roll showing that the petitioner had not worked in the month of November, 1984 does not arise. No adverse inference can be drawn on their not producing the muster rolls of the petitioner for the month of November, 1984. It is well settled that this Court, under Article 226 of the Constitution of India, does not sit in appeal over findings of fact recorded by the Tribunal nor does it re-appreciate the evidence on record to come to a conclusion different from that arrived at by the Tribunal. It is only if the findings are perverse or are based on no evidence, that this Court would be justified in interfering the matter. In the present case the findings of the labour Court that the petitioner did not work for the period of 240 days in the 12 month period preceding his termination cannot be characterized as perverse or as based on no evidence.

In **R.M. Yellatti**[1], the Supreme Court observed: -

"….Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of

discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case……."

As has been held in **R.M. Yeellatti**[1], it is only if the initial burden on the workman, that he worked 240 days in the period of 12 months preceding his termination, is discharged by him adducing cogent evidence, both oral and documentary, would the burden shift on the employer. Whether the workman has discharged the initial burden would depend on the facts and circumstances of each case. The Supreme Court further held that termination of services of daily waged earners differs from regular employees, as they are not given letters of appointments and that in most cases the daily wage workman can only call upon the employer to produce before the court the nominal muster roll and failure of the employer to do so would necessitate drawing of an adverse inference. The Supreme Court, however, held that self-serving statements by the workman would not suffice in the matter of discharge of burden.

In the case on hand the documentary evidence produced by the petitioner merely shows that he worked with the respondent from 01.06.1984 to 31.01.1985. The respondents have categorically stated in their counter affidavit that the petitioner did not work in the month of November, 1984. The labour Court, as a fact, has found that for this period from 01.06.1984 to 31.01.1985

the petitioner had not put in the requisite 240 days of service in the 12 month period preceding his termination. The award of the Tribunal dismissing the I.D. cannot, therefore, be faulted. While the submission of Sri B.G. Ravindra Reddy, learned Counsel for the petitioner that production of muster rolls in the form of loose sheets would result in depriving the workman of the benefits to which he is legitimately entitled to cannot be said to be without merit, in the facts and circumstances of the present case, wherein the certificate produced by the petitioner-workman itself shows that he worked only from 01.06.1984 to 31.01.1985 coupled with the plea in the counter-affidavit filed by the respondent before the Tribunal that he did not work for the month of November, 1984, it cannot be said that production of muster sheets for the other months, in the form of loose sheets, has caused prejudice to the petitioner. I see no justification in interfering with the award of the Tribunal. The writ petition fails and is accordingly dismissed.

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Date: 23.01.2007 RAMESH RANGANATHAN, J

MRKR

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[1] 2005(1) Decisions Today (SC) 1156

[2] (2002)3 SCC 25

[3] (2004)8 SCC 161

[4] (2004)8 SCC 246

[5] (2004)8 SCC 195